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February 22, 2001

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**FEB 22 2001**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Commission's Secretary  
Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., TW-A325  
Washington, D.C. 20554

Re: **Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands**  
**Reallocation of the 216–220 MHz, 1390–1395 MHz, 1427–1429 MHz, 1429–1432 MHz, 1432–1435 MHz, 1670–1675 MHz, and 2385–2390 MHz Government Transfer Bands,**  
**Docket Nos. ET–00–221, RM–9267, RM–9692, RM–9797 and RM–9854**

Dear Secretary Salas:

Enclosed for filing in the above-referenced docketed proceedings please find the original and seventeen (17) copies of the Comments of Instantel, Inc., as well as an additional three (3) copies.

Please acknowledge your receipt of the enclosed by date-stamping the three (3) additional copies and returning them to the undersigned VIA the delivering courier.

Sincerely,

Brandon Boss

BSB  
Enclosures

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**FEB 22 2001**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

In the Matter of:	ET Docket No. 00-221
Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands	RM-9267 RM-9692 RM-9797 RM-9854

**COMMENTS OF INSTANTEL, INC.**

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February 22, 2001

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**COMMENTS OF INSTANTEL, INC.**

InstanTEL, Inc. ("InstanTEL") hereby submits its comments regarding the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.

**I. SUMMARY OF POSITION**

InstanTEL, a manufacturer of Part 15 devices employed in patient, personnel and asset security systems for the health care industry, opposes the petition of Regionet to reallocate the 216-217 MHz band to the Paging and Radiotelephone Service and supports the Commission's alternate proposal to elevate the Low Power Radio Service ("LPRS") to primary status. Regionet's proposal is contrary to the public interest because it would in all likelihood result in unacceptable interference with the operation of InstanTEL's products, as well as with a variety of valuable, licensed uses of radio spectrum.

Nearly 2000 health care providers across the United States use InstanTEL's products to enhance the safety and quality of life of patients and health care personnel. InstanTEL products monitor the locations of Alzheimer's patients, automatically locking doors or sounding alarms if they start to wander from safe areas. InstanTEL products monitor the locations of infants and small children in health care facilities, guarding against the very real risk of abduction. InstanTEL products save lives by

summoning emergency personnel promptly. Interference with these uses of Instatel products would be contrary to the public interest.

The Commission's evaluation of the public interest should include consideration of the interests of authorized incumbent unlicensed users of radio spectrum, as well as those of licensed users. Failure to do so would decrease the value and usefulness of unlicensed devices and cause manufacturers and users to forego valuable unlicensed uses of spectrum. Such consideration need not provide unlicensed users with vested rights to particular frequencies, but should weigh against authorizing services that would cause harmful interference to valuable incumbent uses of spectrum, whether licensed or unlicensed.

Rather than authorize paging operations in the 216–217 MHz band, the Commission should elevate the Low Power Radio Service to primary status. Such action would protect Instatel's customers, as well as LPRS licensees, from harmful interference without actually reserving spectrum for their unlicensed operations.

The Commission's existing allocation of the 216–220 MHz band complies with Section 309(j) of the Communications Act. That section requires the Commission to license spectrum through competitive bidding only when issuing mutually exclusive licenses. Because of the significant potential for interference between any high power operation in the 216–217 MHz band and a broad range of valuable incumbent uses, mutually exclusive licensing is not appropriate in that band, and Section 309(j) accordingly does not require the assignment of licenses through competitive bidding.

## **II. INSTATEL'S INTEREST IN THIS PROCEEDING**

Instatel manufactures and markets patient, personnel and asset security systems for the health care industry utilizing 30 KHz of spectrum centered at 217.003 MHz on an unlicensed basis

pursuant to 47 CFR § 15.231.<sup>1</sup> Instantel has distributed these products in the United States for the last ten years. Instantel's products include WATCHMATE®, a resident wander protection system for monitoring Alzheimer's patients; HUGS™, an Infant Protection System that protects infants and children from potential abduction in maternity wards and nurseries; MYCALL™, a personnel locator and personal alarm system; FINDIT™, an asset management system that keeps track of the location of facility assets; and KEEPIT™, an asset security and alarm system. Almost 2000 WATCHMATE<sup>®</sup> systems and over 150 HUGS™ systems have been installed in locations throughout the United States. Martin Declaration ¶¶ 4–5, 7.<sup>2</sup> Instantel has installed a few MYCALL™ systems in the United States and anticipates significant future sales of this product. A number of Instantel's US customers are actively considering upgrading their WATCHMATE® and HUGS™ systems to include FINDIT™ or KEEPIT™ capabilities. *Id.* ¶ 8.

Instantel opposes Regionet's proposal to allocate the 216–220 MHz band for two-way paging and supports the Commission's alternative proposal to elevate the status of the Low Power Radio Service ("LPRS") to primary status. Instantel has engineered its products to avoid interference from or with existing licensed uses on frequencies near 217 MHz, but it is concerned that two-way paging signals would be likely to generate unacceptable interference with the operation of its products. Unacceptable interference with Instantel's products from the operation of a two-way paging system would unduly burden the roughly 2000 US hospitals and nursing homes, many of which are small businesses or organizations, that use Instantel's products. Although Instantel recognizes that it and its customers have no vested right to the continued use of the 217.003 MHz frequency, the Commission should consider the potential for unacceptable interference with Instantel's customers'

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<sup>1</sup> Brochures describing Instantel's products that operate at 217.003 MHz are attached hereto as Exhibit E.

<sup>2</sup> The Declaration of Brian Martin, President of Instantel, is attached hereto as Exhibit A.

systems as one factor in its public interest inquiry. Elevation of the LPRS to primary status would be likely to provide sufficient protection for the continued unlicensed use of Instantel's products without formally granting them protected status.

### **III. ARGUMENT**

#### ***A. Regionet's Proposal to Reallocate the 216–217 MHz and 218–219 MHz Bands to the Paging and Radiotelephone Service Is Contrary to the Public Interest.***

The Commission has requested comments on Regionet's proposal to reallocate the 216–217 MHz and 218–219 MHz bands to the Paging and Radiotelephone Service for use to provide two-way paging services. NPRM ¶ 17. The Commission should reject this proposal as contrary to the public interest. The operation of a two-way paging service on these spectrum bands would in all likelihood create unacceptable interference with a broad range of incumbent uses of the frequencies. In addition to the difficulty of operating two-way paging without interfering with the many and varied incumbent licensed uses of these spectrum bands that the Commission discussed in the NPRM, paging operations at frequencies just below 217 MHz would be likely to create unacceptable interference with existing installations of Instantel's WATCHMATE<sup>®</sup>, HUGS<sup>™</sup>, and MYCALL<sup>™</sup> products. As discussed below, such interference would be contrary to the public interest.

##### **1. Authorizing Interference with Instantel's Products Would Be Contrary to the Public Interest.**

Nearly 2000 health care facilities in the United States use WATCHMATE<sup>®</sup> to enhance the safety and quality of life of Alzheimer's residents. As described on Instantel's Web site:

Instantel's WATCHMATE<sup>®</sup> product line utilizes radio frequency (RF) Technology to monitor Alzheimer's residents in health care facilities who have a tendency to wander away from safe areas. The system eliminates the need for other forms of restraint and allows the resident safer freedom of movement. WATCHMATE<sup>®</sup> systems sound an alarm to alert staff when a wanderer approaches a protected area. The wanderer wears a small transmitter, approximately the size of a man's sport watch. Monitors are installed at each door, corridor or other protected area to detect the presence of a transmitter and initiate the appropriate response such as locking the door or sounding an alarm.

<http://www.instantel.com/watchmate/default.htm>. Prior to the availability of these systems, Alzheimer's patients were either physically restrained (tied down) or chemically sedated from wandering. Such electronic monitoring systems allow healthcare facilities to economically and practicably comply with requirements of the Nursing Home Reform Act, 42 U.S.C. § 1396r, mandating the quality of care in nursing homes.

Although Instantel recently has begun successfully to sell WATCHMATE® systems to major nursing home chains, most of its existing US WATCHMATE® customers are smaller nursing homes and assisted living facilities. Martin Declaration ¶ 5. Unacceptable interference between a two-way paging system or other higher power licensed system and these WATCHMATE® installations would force these small businesses and organizations either to replace their existing wander prevention systems or to employ more intrusive and less safe security procedures for their Alzheimer's patients, including physical and chemical restraints. *Id.* ¶ 6.

Instantel's HUGS™ product is used in over 150 hospitals across the United States to protect infants and children in maternity wards, nurseries and pediatric care facilities from abduction. Martin Declaration ¶ 7. The Joint Commission on Accreditation of Hospitals has recommended that hospitals invest in electronic infant and child security systems. De Jong Declaration ¶ 7.<sup>3</sup> HUGS™ is superior to or less expensive than other such systems. *Id.* ¶ 17; Bassett Declaration ¶¶ 6–7<sup>4</sup>; Mahaney Declaration ¶¶ 7–17.<sup>5</sup>

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<sup>3</sup> During the latter part of 1999 and all of 2000, Instantel was engaged in patent infringement litigation concerning its HUGS™ product. The Declaration of Daniel De Jong, president of a distributor of HUGS™, was given in connection with that litigation and is attached hereto as Exhibit B. Certain confidential business information that was relevant to that litigation, but not relevant to these Comments, has been redacted.

<sup>4</sup> The Declaration of Thomas Charles Bassett, the Manager of Security, Parking and Transportation for a HUGS™ customer, was also given in connection with Instantel's patent infringement litigation and is attached hereto as Exhibit C.

<sup>5</sup> The Declaration of Carol A. Mahaney, Nursing Information Systems Analyst for a HUGS™ customer, was also given in connection with Instantel's patent infringement litigation and is attached hereto as Exhibit D.



If Instantel's HUGS™ product were unable to operate on its current unlicensed frequency, nursery units using the HUGS™ system would be forced to return to risky security measures to prevent abductions. See Mahaney Declaration ¶ 21; Bassett Declaration ¶¶ 12, 14. As a result, infant patients and their families would be exposed to an increased threat of an abduction. For example, prior to purchasing the HUGS™ system, Foote Hospital in Jackson, Michigan, had numerous security problems involving attempted infant abductions by estranged spouses, angry parents, and parents wishing to prevent children from being placed in foster care. Mahaney Declaration ¶ 4. Without the HUGS™ system, the hospital would be forced to return to the reactive security measures it had used previously in which security is determined on a child by child basis. *Id.* ¶ 21. This system cannot provide sufficient security guards and exposes personnel to potentially violent situations. *Id.* ¶¶ 22–24. Similarly, Crouse Hospital in Syracuse, New York, would be forced to decrease the level of its infant security where the crime risk is currently “as great as ever” if it could not operate using the HUGS™ system. Bassett Declaration ¶¶ 12–14.

Instantel and its customers could not simply migrate to another frequency if unacceptable interference resulted from assigning the 216–220 band for two-way paging. Instantel would need to redesign its systems, and its customers would need to replace existing WATCHMATE® systems in their entirety. Martin Declaration ¶ 9. Transmitters and receivers at all existing HUGS™ installation would require replacement, and hospital infrastructure (cabling and conduit) might need to be replaced in many cases. *Id.* Moreover, many of Instantel's customers have already fully utilized their budgets for infant security in purchasing Instantel's product. *See, e.g.*, Mahaney Declaration ¶ 26; Bassett Declaration ¶ 14. Such customers do not have sufficient funding to replace their systems. In addition to the increased risk of harm to infants, their families, and hospital personnel, a hospital could face enormous liability if a child were abducted because its HUGS™ system malfunctioned. See Mahaney Declaration ¶ 24; Bassett Declaration ¶ 14.

## **2. The Commission's Public Interest Determination Should Consider the Interests of Incumbent Unlicensed Users.**

Instantel acknowledges that operators of unlicensed radio frequency devices under Part 15 of the Commission's rules "shall not be deemed to have any vested or recognizable right to continued use of any given frequency by virtue of prior registration or certification of equipment." 47 CFR § 15.5(a). Instantel submits, however, that the unlicensed status of its customers' operations should not preclude consideration of their valuable, existing use of spectrum as part of the Commission's evaluation of the public interest.

Were the Commission to fail altogether to consider the interests of incumbent unlicensed users when assigning spectrum for licensed uses, the unlicensed use of spectrum would be less valuable. In selecting an operating frequency for an unlicensed Part 15 device, a manufacturer necessarily takes into account the kinds of licensed and unlicensed uses that are authorized at various frequencies, as well as the specific technical requirements in Part 15 itself, in order to minimize the risk of unacceptable interference between the manufacturer's device and other authorized uses of spectrum. In the case of Instantel's devices, the U.S. Navy's SPASUR radar system is limited to three transmitter sites. Use of the Automated Maritime Telecommunications System in the 217–218 MHz band is limited to the coastlines and inland waterways of the United States and employs low power levels that are unlikely to interfere with the operation of Instantel's devices in most cases. Instantel engineered its systems to be compatible with the telemetering and telecommand applications authorized in the 216–220 MHz band for the FS, AMS and Land Mobile Service, and its devices are compatible with LPRS operations in the 216–217 MHz band.

Part 15 device manufacturers cannot, however, engineer their devices to avoid interference with and from every possible use that conceivably might be authorized on a particular frequency. They necessarily are dependent upon the maintenance of some degree of consistency in the Commission's frequency allocation tables over time, and the Commission should consider existing authorized uses

of unlicensed devices when reassigning spectrum to new services. A refusal by the Commission to do so would increase the business risks associated with the manufacture and use of Part 15 devices. Users would be more reluctant to use Part 15 devices if there were a greater perceived risk that the Commission might authorize interfering uses of spectrum. In some cases, manufacturers and users of such devices might forego potentially valuable and non-interfering uses of spectrum lest the Commission render their products unusable by licensing their chosen spectrum for incompatible uses.

Consideration of the interests of existing unlicensed users as part of the Commission's evaluation of the public interest need not create a vested expectation of a right to continued use of unlicensed spectrum contrary to the policy of Section 15.5(a). If an unlicensed use of a frequency band were the only substantial existing use that was incompatible with a proposed new, licensed use the Commission might be warranted in concluding that the public interest did not require protection of the existing use.<sup>6</sup> In a case such as this, however, where a proposed use (two-way paging) is potentially incompatible with a broad range of existing, licensed uses, the fact that it would also be likely to cause unacceptable interference with a valuable unlicensed use should lead the Commission to deny the proposed new use.

***B. The Commission Should Elevate the Low Power Radio Service to Primary Status in the 216–217 MHz Band.***

In the NPRM the Commission expressed concern “about the continued viability of the incumbent, non-Government services, particularly LPRS, in the 216-220 MHz band, which, while not authorized on a primary basis, serve important public needs.” NPRM ¶ 12. LPRS stations are licensed by rule to transmit voice, data, or tracking signals for the following purposes:

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<sup>6</sup> Such a determination should be based upon an evaluation of the particular use being made of spectrum, however, and not simply upon the fact that it is an unlicensed use.

(a) Auditory assistance communications (including but not limited to applications such as assistive listening devices, audio description for the blind, and simultaneous language translation) for:

(1) Persons with disabilities. . . .

(2) Persons who require language translation; or

(3) Persons who may otherwise benefit from auditory assistance communications in educational settings.

(b) Health care related communications for the ill.

(c) Law enforcement tracking signals (for homing or interrogation) including the tracking of persons or stolen goods under authority or agreement with a law enforcement agency (federal, state, or local) having jurisdiction in the area where the transmitters are placed.

(d) AMTS point-to-point network control communications.

47 CFR § 95.1009.

In authorizing the use of radio-based health care aids in the LPRS, the Commission stated:

Use of such devices would include, but not be limited to, the remote monitoring of patients' vital signs in hospitals and residential health care facilities. These advanced radio-based health care tools would allow health care providers to closely monitor several patients at once from a central location, rather than periodically checking each patient individually. By monitoring the vital signs of patients in real-time, health care providers will likely be better able to respond quickly in emergency situations.

*Amendment of the Commission's Rules Concerning Low Power Radio and Automated Maritime Telecommunications System Operations in the 216–217 MHz Band*, WT Docket No 96–56, *Report and Order*, 11 FCC Rcd 18,517 (1996) (“LPRS Order”), at ¶ 16.

Instantel's products, while not used in the LPRS itself, complement the purposes of the LPRS. Just as LPRS health care aids permit health care providers to monitor the vital signs of several patients at once from a central location, WATCHMATE® and HUGS™ systems permit those same health care providers to monitor the location of Alzheimer's patients and infants and small children from a central location in order to provide improved security for patients whose physical security is particularly at risk. Indeed, Instantel's MYCALL™ product is very similar, for use in a confined

setting, to the proposed personal alerting systems that the Commission declined to authorize in the LPRS. The Commission declined to authorize such systems in the LPRS primarily because it received no indication that any public safety organization was willing to provide an associated monitoring service. *LPRS Order* ¶ 20.<sup>7</sup> This concern does not apply to MYCALL™ because that product is marketed only to those who will provide such monitoring services in a confined setting, not to individuals who would expect monitoring to be available within a broad geographic area. As such, MYCALL™ can provide a valuable supplement to LPRS health care aids, permitting rapid, life-saving responses to emergencies experienced by patients for whom vital sign monitoring may not be necessary. Similarly, WATCHMATE® and HUGS™ systems facilitate passive monitoring of the security of many of those patients.

Elevation of LPRS to primary status would in most cases provide ample protection for users of Instantel's products without actually reserving spectrum for Instantel's customers. Any high power signal in the 216–217 MHz band that would be likely to present harmful interference to the operation of Instantel's products would also be likely to interfere with LPRS uses. Prohibiting signals that would interfere with LPRS would thus provide Instantel sufficient protection at the low end of its receivers' frequency range. Similarly, the low power AMTS operations that the Commission authorized in the 217–218 MHz bands in *Amendment of the Commission's Rules Concerning Maritime Communications*, PR Docket No. 92–257, Fourth Report and Order and Third Notice of Proposed Rule Making, \_\_\_\_ FCC Rcd \_\_\_\_ (Released November 16, 2000), are unlikely to interfere with the operation of Instantel's products. Because of the very low power levels employed for both LPRS and Instantel's products, any interference between Instantel's systems and LPRS

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<sup>7</sup> The Commission also expressed concern that such a system might pose a potential for harmful interference "because personal alerting systems . . . could involve a large number of transmitters operating simultaneously in a small geographic area." *LPRS Order* ¶ 20. MYCALL™ does not present the same potential for interference because it is not used by the public as a general alerting system but only in confined settings to monitor a limited number of individuals in any given location.

operations would likely involve competing uses within the same organization, which would facilitate coordination and the elimination of any harm. *Cf. LPRS Order* at 34 (noting that if harmful interference occurs between LPRS devices it will likely be between two devices of the same type used in the same location, thus facilitating non-interfering operation through channel selection).

The Commission established LPRS in the 216–217 MHz band, in part, specifically because of harmful interference from high powered users experienced by auditory assistance devices operating in the 72–76 MHz band pursuant to Part 15. *LPRS Order* ¶ 14. For the Commission now to authorize paging operations in the 216–217 MHz band would result in the very harm that it sought to mitigate by establishing LPRS. As the Commission noted in the NPRM, coordination between LPRS users and any new service provider would be difficult, if not impossible, because the Commission maintains no records of the number or location of LPRS users. NPRM ¶ 12. Rather than endanger the valuable services provided in the LPRS, and the valuable and complementary unlicensed uses of Instantel’s products, by authorizing paging operations in the 216–217 MHz band, the Commission should elevate LPRS to primary status.

***C. The Commission Has Complied with Section 309(j).***

The Commission’s existing allocation of the 216–220 MHz band is consistent with Section 309(j) of the Communications Act. As amended by the Balanced Budget Act of 1997, Section 309(j)(1) requires the Commission to award licenses by competitive bidding whenever “mutually exclusive applications are accepted for any initial license or construction permit.” The amendment highlighted, however, the Commission’s “obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.” 47 U.S.C. § 309(j)(6)(E). As the Commission recently concluded, “the Commission, as part of its public interest analysis, should give significant consideration to the effectiveness of existing licensing mechanisms that avoid

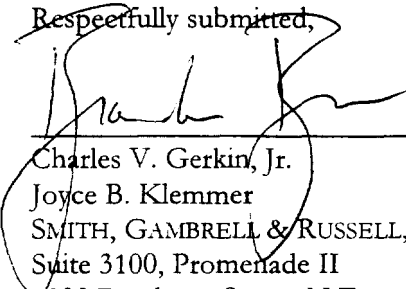
mutual exclusivity, and should weigh the potential costs of changing such mechanisms against the potential benefits.” *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended*, WT Docket No. 99–87, Report and Order and Further Notice of Proposed Rulemaking, \_\_\_\_ FCC Rcd. \_\_\_\_ (Released November 20, 2000).

As the Commission discussed in the NPRM at ¶¶ 8–12, a number of services already are authorized on the 216–220 MHz band. Some of these services are licensed on a site-by-site basis, some by rule, and some by competitive bidding. In addition to the services discussed by the Commission, unlicensed operations are permitted on these frequencies for the transmission of control signals, including recognition codes, pursuant to 47 CFR § 15.231. Before authorizing services that involve mutually exclusive applications, the Commission has determined that the operation of those services will not unreasonably interfere with existing uses of the spectrum. Section 309(j) requires the Commission to avoid mutually exclusive licensing where it is in the public interest to do so, and its existing licensing of the 216–217 MHz band by rule in the LPRS is consistent with that requirement. The award of a license by competitive bidding to use the 216–217 MHz band for paging operations would potentially disrupt a broad range of existing licensed and unlicensed uses of this and immediately adjacent bands and is not mandated by Section 309(j).

#### IV. CONCLUSION

For the foregoing reasons, InstanTEL, Inc. respectfully submits that the Commission should deny the petition of Regionet to reallocate the 216–217 MHz and 218–219 MHz bands to the Paging and Radiotelephone Service and should elevate the Low Power Radio Service to primary status in the 216–217 MHz band.

Respectfully submitted,



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Attorneys for Instantel, Inc.

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**DECLARATION OF BRIAN MARTIN**

1. I, Brian Martin, am over 21 years of age, am competent to give this declaration, and make this declaration on the basis of my personal knowledge of the facts hereinafter set forth.

2. I am President of Instantel, Inc. ("Instantel"), which was founded in 1982. I have been President of Instantel since 1988. Instantel is a Canadian corporation with its principal place of business at 309 Legget Drive, Kanata, Ontario, Canada.

3. Since 1990, Instantel has developed and marketed personnel and asset tracking devices for the health care security industry using radio frequency technology on the 217.003 MHz frequency pursuant to Part 15 of the Federal Communications Commission's rules.

4. Instantel's products include WATCHMATE®, a resident wander protection system for monitoring Alzheimer's patients; HUGS™, an Infant Protection System that protects infants and children from potential abduction in maternity wards and nurseries; MYCALL™, a personnel locator and personal alarm system; FINDIT™, an asset management system that keeps track of the location of facility assets; and KEEPIT™, an asset security and alarm system.

5. Almost 2000 WATCHMATE® systems have been installed in the United States. Although Instantel recently has begun successfully to sell WATCHMATE® systems to major nursing home

chains, most of its existing US WATCHMATE® customers are smaller nursing homes and assisted living facilities. Most of these smaller facilities have annual revenues of less than \$5 million.

6. Unacceptable interference between a two-way paging system or other higher power licensed system and WATCHMATE® installations would force the small businesses and organizations that use WATCHMATE® either to replace their existing wander prevention systems or to employ more intrusive and less safe security procedures for their Alzheimer's patients, including physical and chemical restraint systems. The well-being and safety of Alzheimer's patients would be put into jeopardy.

7. Instantel's HUGS™ product is used in over 150 hospitals across the United States to protect infants and children in maternity wards, nurseries and pediatric care facilities from abduction. Unacceptable interference from a two-way paging system or other higher power licensed system would put infants at risk of abduction.

8. Although to date Instantel has installed only a few MYCALL™ systems and no FINDIT™ or KEEPIT™ systems in the United States, a number of our US customers are actively considering upgrading their WATCHMATE® and HUGS™ systems to include some or all of Instantel's other products. The MYCALL™ system has been shown to save people in emergency situations. Unacceptable interference between a two-way paging system or other higher power licensed system would put lives at risk.

9. If Instantel were unable to continue to use the 217.003 MHz frequency for its products, it would need to redesign them to operate on another frequency. Existing WATCHMATE® systems would need to be replaced in their entirety. Existing HUGS™ customers would need to replace their transmitters and receivers. In many cases, it would be necessary to replace hospital infrastructure, such as cabling and conduit.

10. Instantel markets its products in part through a network of dealers. Instantel has about thirty WATCHMATE® dealers in the United States, the majority of which appear to be small businesses as defined by the Federal Communications Commission ("FCC"). Instantel also has about thirty HUGS™ dealers in the United States, including some overlap with its WATCHMATE® dealers. Again, most of Instantel's HUGS™ dealers appear to be small businesses as defined by the FCC. All of these Instantel dealers would be severely negatively impacted if WATCHMATE® and HUGS™ became unmarketable in the United States because of interference from other spectrum users.

11. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 21st day of February, 2001.

  
\_\_\_\_\_  
Brian Martin

B

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

INSTANTEL, INC.,

Plaintiff,

v.

R.F. TECHNOLOGIES, INC.,

Defendant.

Civil Action No. 99-C-0766

**DECLARATION OF DANIEL DE JONG**

1. I, Daniel De Jong, am over 21 years of age, am competent to give this declaration, and make this declaration on the basis of my personal knowledge of the facts hereinafter set forth.

2. I am President of Innovative Medical Systems Inc. ("IMS"), a company founded by me and two others in 1988. I have been President of IMS since 1993. IMS is a Michigan corporation with its principal place of business at 2515 Three Mile Road, N.W., Grand Rapids, MI 49544.

3. IMS was formed to provide sales, marketing and service support for specialty medical products with a focus on software products that require technical support and expertise that not many firms can provide.

4. Through the years, IMS has marketed and sold products for many companies, including Nihon Kohden, Colin Medical, Air-Shields/Vickers Medical and Hill-Rom Inc. The

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**EXHIBIT B**

principals and staff at IMS have been involved in the marketing and support of medical telemetry products and computer based information systems for the hospital market.

6. In the fall of 1998, we learned of the HUGS system being marketed and sold by Instantel, Inc. ("Instantel") and began pursuing the opportunity to become one of Instantel's dealers for the system. In February 1999, we began to promote, sell and distribute the HUGS product, and, in June 1999, we signed an authorized dealer agreement with Instantel. We currently sell Instantel products in Michigan, Ohio, Kentucky, Indiana, West Virginia and Indiana and have just begun to market the system in Maine, New Hampshire and Vermont.

7. The market for infant security systems has really begun to "open up." Hospitals are realizing that they must improve their security policies and protect their patients with electronic security systems. The Joint Commission on Accreditation of Hospitals ("JCAHO") has also taken a new, stronger position on infant/child security and is strongly suggesting that hospitals invest in electronic systems. Market pressures and changing standards of care are forcing many hospitals to purchase these systems as well. In fact, we have never seen a market as "hot" as the infant security systems market is right now.

8. Our current statistics from Michigan, Ohio and West Virginia indicate that 15-20% of hospitals have electronic infant security systems. At the current rate of interest and activity,

we anticipate that this number may be as high as 50% by the end of the year 2000 and probably 100% by the end of 2001. If Instantel is barred from selling the HUGS product in the United States while this litigation is pending, the market will pretty much be done. It would take years to gain back the lost market share.

9. The HUGS product, and the rest of the Instantel product line, has been the major focus for IMS in the second half of 1999 and will continue to be in the year 2000. The reason for this is three fold. First, the HUGS product fits our area(s) of expertise perfectly. All of our past experience and knowledge base can be applied here. Second, the market for infant security systems is very "hot" right now.

Without the HUGS

system, we would not be able to maintain our business as we do now.



11. Since we started marketing the HUGS system in February 1999, 36% of our sales contacts have been on the HUGS system. As a result, we have greatly expanded our market. Traditionally we have marketed our products only in Michigan and northwestern Ohio. By using the HUGS product as the foundation of our product base, we have added sales representatives in the rest of Ohio and in West Virginia, Kentucky, Indiana, New Hampshire, Vermont, and Maine.

12. The HUGS system has been so successful because it has features that the market is really asking for, including ease of use, current technology, and an extremely high security level. Probably 90% of our sales have been made to customers that have also considered the product. The HUGS product was chosen because of the reasons mentioned above, even though in some cases the HUGS product was more expensive.

13. If Instantel was not able to market the HUGS product in the United States, the impact on IMS would be huge.

14. There would be immediate changes in sales and office staff. We would have to let three sales representatives go: the one covering Ohio, the one covering West Virginia and Kentucky, and the one covering the New England area. Without being able to sell the HUGS product, these representatives could not make a living on the balance of the products we have available for sale in those areas. We might be able to keep on our two remaining representatives if we could find some other products quite soon.

15. We also would have to let one person from our office staff go to lower expenses until other product lines could be obtained.

17. If Instantel were barred from selling the HUGS product in the United States, IMS would not likely get back into the infant security market. There is no system available, that we know of, that has the features of the HUGS product at the cost. We could not sell, in good conscience, any of the systems like because, in our opinion they can be defeated too easily and do not justify the cost. The only other infant security system, was a relative secure one, but the cost of ownership was too high, and customers will not pay the price.

18. If Instantel were barred from selling the HUGS product in the United States, all of our customers would be adversely affected. We have several customers that have the HUGS product in either their OB or Pediatrics Departments and are budgeting to expand the system to

the other department (OB or Peds). If we could not sell additional product to them, they would be left with no system for those areas or having to choose another, less secure system.

19. All of our Instantel customers would also be adversely impacted if we were not able to sell replacement tags and straps to them. The HUGS system cannot function without tags and straps. If one of our customers' HUGS systems could not function, there would be a serious security risk at the hospital, potentially leading to the abduction of an infant.

20. We also are scheduled to deliver and install a HUGS system at a hospital in Kentucky in April or May 2000. This hospital would be significantly impacted if it were unable to get the HUGS system it contracted for.

21. We also have 45 accounts "in the pipeline" for purchases in the year 2000. Approximately 7 of those have already received budget approval for purchase in January and February. These customers would be negatively impacted as well if the HUGS system was not available to them.

22. An injunction preventing Instantel from selling the HUGS systems or replacement parts for the system in the United States would also likely cause significant damage to our reputation with our customers and in the market as a whole. As a distributor, our relationships with our customers are very important to us, and we work hard to maintain those relationships. Many of our customers buy products from us in addition to the HUGS system and replacement parts for the system. If a customer's HUGS system could not function because we could not provide the customer with replacement tags, it is likely that such customer would not ever do

business with us again. This potential damage to our reputation is of particular concern here because we have recently expanded our business to areas in which we have never done business before. If we could no longer support the HUGS systems purchased by these customers, our relationships with these customers would likely be destroyed, and we would lose the goodwill that we have thus far developed in these new markets.

23. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 14<sup>th</sup> day of December, 1999.

  
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DANIEL DE LONG

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